

## Exhibit 18

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

DIVERSI-PLAST PRODUCTS, INC., a  
Minnesota Corporation,

Plaintiff,

v.

BATTENS PLUS, INC., a California  
Corporation,

Defendant.

AND RELATED COUNTERCLAIMS

Case No. 2:04CV01005 PGC

BATTENS PLUS, INC.'S FIRST  
SUPPLEMENTAL RESPONSES TO  
PLAINTIFF'S SECOND SET OF  
INTERROGATORIES (NOS. 11 TO 20)

PROPOUNDING PARTY: Plaintiff Diversi-Plast Products, Inc.

RESPONDING PARTY: Defendant Battens Plus, Inc.

SET NUMBER: Two

890873v2 34873/0007

EXHIBIT

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### **PRELIMINARY STATEMENT**

Defendant Battens Plus, Incorporated ("Battens Plus") hereby supplements its responses, pursuant to Federal Rules of Civil Procedure 26(e) and 33, to the Second Set of Interrogatories (Nos 11 to 20) propounded by Plaintiff Diversi-Plast, Inc. ("Diversi-Plast").

These Responses state the knowledge, information, and belief of Battens Plus as of the date served. Battens Plus is presently engaged in its own investigation and discovery. Further investigation may lead to additional information relevant to the subject matter of Diversi-Plast's requests. As a result, Battens Plus reserves its right to amend or supplement its Responses at any time and to use any subsequently acquired information at trial, hearing, and for any other purpose.

Moreover, Battens Plus notes that its Responses may be based upon hearsay or other forms of information that is not necessarily reliable nor admissible into evidence and, as a result, Battens Plus provides notice that it does not waive, and hereby specifically reserves, its right to object to the introduction into evidence of the Requests and/or its Responses thereto at any trial or hearing.

### **GENERAL OBJECTIONS**

1. Battens Plus objects to each request to the extent it seeks information that is not relevant to the issues in this litigation or is not reasonably calculated to lead to the discovery of relevant information.

2. Battens Plus objects to the discovery requests to the extent they are unreasonably vague, overly broad, repetitious, unduly burdensome, or purport to required the disclosure of information beyond the scope of permissible discovery under the Federal Rules of Civil Procedure or this Court's Local Rules.

3. Battens Plus objects to the discovery requests to the extent they call for the production of information confidential to Battens Plus or third parties, including trade secrets, research and development, or commercial information entitled to be kept confidential under Federal Rule of Civil Procedure 26. Battens Plus will produce such information, to the extent it

is responsive, non-privileged and not covered by another objection, subject to the protective order.

4. To the extent any interrogatory requests information protected by the attorney-client privilege or work product immunity, or protected by any other applicable privilege or right, Battens Plus objects and will not provide such information.

5. Battens Plus objects to these interrogatories to the extent they violate this Court's Scheduling Order and the Federal Rule of Civil Procedure 33(a) limitation on the number of interrogatories including all discrete subparts.

6. Battens Plus objects to the discovery requests on the basis of the foregoing general objections and such other additional specific objections as have been set forth herein. Battens Plus does not waive any general objection to a specific discovery request unless a response to a specific request states that "all General Objections are waived."

### **INTERROGATORIES**

#### **INTERROGATORY NO. 12:**

Identify and describe in detail all facts and evidence supporting the Third, Fourth, and Fifth Counts of your Counterclaims.

#### **RESPONSE TO INTERROGATORY NO. 12:**

Battens Plus objects in that this interrogatory is overly broad and unduly burdensome. Battens plus also objects in that this interrogatory is numbered as a single interrogatory but is in multiple discrete subparts in violation of Federal Rule of Civil Procedure 33(a). Battens Plus still further objects to this interrogatory as premature. Fact discovery is ongoing. Battens Plus has not yet had a full opportunity to obtain the requested facts and evidence and notes that it can, and if necessary will, supplement its response to this Request at any time.

Subject to and without waiving its General Objections and these specific objections, Battens Plus answers that it is still gathering facts and evidence supporting its Counterclaims and will supplement this Response as required.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

Battens Plus incorporates herein all previous objections to Interrogatory No. 12.

Subject to and without waiving its General Objections and these specific objections, Battens Plus responds that the parties have agreed to stipulate to the dismissal of Battens Plus' Third, Fourth, and Fifth Counterclaims. This interrogatory is, therefore, no longer relevant.

**INTERROGATORY NO. 13:**

Identify and describe in detail all of your alleged damages related to the Third, Fourth, and Fifth Counts of your Counterclaims.

**RESPONSE TO INTERROGATORY NO. 13:**

Battens Plus objects in that this interrogatory is overly broad and unduly burdensome. Battens Plus also objects in that this interrogatory is numbered as a single interrogatory, but is in multiple discrete subparts in violation of Federal Rule of Civil Procedure 33(a). Battens Plus still further objects to this interrogatory as premature. Fact discovery is ongoing. Battens Plus has not yet had a full opportunity to calculate its damages related to the identified Counterclaims and notes that it can, and if necessary will, supplement its response to this Request at any time. Battens Plus still further objects in that this interrogatory is premature in that it calls for information requiring expert analysis.

Subject to and without waiving its General Objections and these specific objections, Battens Plus answers that it is still calculating its damages related to the identified Counterclaims and will supplement this Response if and when expert reports are exchanged.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:**

Battens Plus incorporates herein all previous objections to Interrogatory No. 13.

Subject to and without waiving its General Objections and these specific objections, Battens Plus responds that the parties have agreed to stipulate to the dismissal of Battens Plus' Third, Fourth, and Fifth Counterclaims. This interrogatory is, therefore, no longer relevant.

**INTERROGATORY NO. 16:**

Identify all facts and evidence supporting any contention that Diversi-Plast had intent to deceive the United States Patent and Trademark Office during the prosecution of the '193 Patent.

**RESPONSE TO INTERROGATORY NO. 16:**

Battens Plus objects to this interrogatory as being premature. Fact discovery is ongoing. Diversi-Plast did not reveal until late November 2005 the identity of the alleged co-inventor of the '193 Patent who, by definition, has information pertaining to this interrogatory. As Battens Plus has not yet been able to depose this individual, and others who may know the facts relating to who actually invented the subject matter claimed in the '193 Patent, and when that activity occurred, Battens Plus has not yet accumulated all facts and evidencing Diversi-Plast's fraud on the Patent Office. Battens Plus notes that it can, and if necessary will, supplement its response to this Request at any time.

Subject to and without waiving its General Objections and these specific objections, Battens Plus answers that documents labeled DP00905-908, 00918, and 01007-14, among others, as well as the transcript of the Diversi-Plast Rule 30(B)(6) deposition witness and the transcript of the Richard Morris deposition all evidence Diversi-Plast's intent to deceive the Patent Office during the prosecution of the '193 Patent.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16:**

Battens Plus incorporates herein all previous objections to Interrogatory No. 16.


Subject to and without waiving its General Objections and all previous objections, Battens Plus further answers that Richard J. Morris committed fraud and inequitable conduct on the Patent Office on or around January 4, 2000. At that time, Morris declared to the Patent Office that he was the original, first, and sole inventor of the inventions claimed in the '193 Patent when, in fact, he was aware that another person, most likely Lars J. Walberg, actually conceived of the claimed inventions and was involved in experiments testing the claimed inventions. Morris again committed fraud and inequitable conduct on the Patent Office on or around June 28, 2004 when he declared to Patent Office that he was the original, first, and sole

inventor of the inventions claimed in the '193 Patent. Evidence demonstrating Morris' fraud and inequitable conduct, and specifically Walberg's inventorship and Diversi-Plast's and Morris's knowledge of that inventorship prior to January 4, 2000, is found in the depositions of Richard J. Morris, Lars J. Walberg, and the 30(b)(6) deposition of Gary Urbanski and the exhibits to those depositions, specifically, without limitation, Exhibit 34.

All declarations from Morris, Walberg, and Diversi-Plast that assert Morris and Walberg are co-inventors, and all declarations claiming that any mistake as to inventorship was without deceptive intent, are also false and constitute fraud and inequitable conduct. Even assuming Diversi-Plast and Morris did have a good faith belief that Walberg's activity in 1997 did not constitute inventive acts, their failure to disclose Walberg's activity during prosecution constitutes a failure to disclose potentially invalidating prior art and is, in itself, fraud and inequitable conduct.

DATED: February 16, 2006

McDONOUGH HOLLAND & ALLEN PC  
Attorneys at Law

By:   
MICHAEL S. WILCOX  
Attorneys for Defendant and Counterclaimant  
Battens Plus, Inc.

CASE TITLE: *Diversi-Plast Products, Inc. v. Battens Plus, Inc.*  
COURT/CASE NO: USDC, Central District of Utah, No. 2:04CV1005 PGC

**CERTIFICATE OF SERVICE**

I am employed in the County of Sacramento; my business address is 555 Capitol Mall, 9th Floor, Sacramento, California. I am over the age of eighteen years and not a party to the foregoing action.

On February 16, 2006 I served the within:

**DEFENDANT BATTENS PLUS, INC.'S FIRST SUPPLEMENTAL RESPONSES TO PLAINTIFF'S SECOND SET OF INTERROGATORIES (NOS. 11 TO 20)**



(by mail) on the party(ies) listed below by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At McDonough Holland & Allen PC, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.



by facsimile transmission, in accordance with Code of Civil Procedure § 1013(e), to the following party(ies) at the facsimile number(s) indicated.

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*Attorneys for Plaintiff Diversi-Plast Products, Inc.*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 16, 2006, at Sacramento, California.



BONNIE CURRIE